

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LINDSEY CLEMENT, EMERALD CLEMENT,
ANDERSON CLEMENT, ANSELM LEE
CLEMENT, AND LISA BEGAY

Plaintiffs,

vs.

No. CIV-05-0590 JB/RLP

MOUNTAIN STATES LOGISTICS, ELISHA
GILBOA, Individually and d/b/a Mountain States
Logistics, CHRIS HOBECK, Individually and d/b/a
Mountain States Logistics, ALFRED TRUJILLO,
Individually and d/b/a Mountain States Logistics,
ERIC CHAVEZ, and LAZARO HERNANDEZ,
and NICA, INC.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiffs' Motion to Enforce Order and for Sanctions Against Defendant NICA, Inc., filed January 17, 2006 (Doc. 51). The Court held a hearing on this motion on February 28, 2006. The primary issue is whether the Court should: (i) compel NICA Inc. ("NICA") to comply with the Court's Order, entered December 12, 2005, directing NICA to revise and to supplement its initial disclosures; and (ii) sanction NICA for failure to comply with the Court's Order. Consistent with the Court's ruling at the hearing on this motion, and for the reasons given at the time of the hearing, the Court will grant the motion in part and will deny the motion in part. The Court will order NICA to comply with its previous order, but the Court will not award sanctions against NICA.

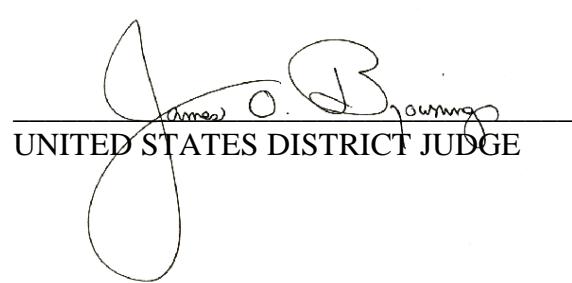
PROCEDURAL BACKGROUND

On December 12, 2005, the Court entered a Memorandum Opinion and Order, see Doc. 36,

ordering NICA to revise and to supplement its Initial Disclosures. See Memorandum Opinion and Order at 3. The Court found that NICA's initial disclosures were not adequate, and ordered NICA to revise and to supplement such disclosures within 10 days of the date that the Court entered the Memorandum Opinion and Order. See id. at 3.

The Plaintiffs move the Court to enforce the Order entered December 12, 2005 and for sanctions against NICA. See Motion to Enforce Order and for Sanctions Against Defendant NICA, Inc. at 1. Consistent with the Court's ruling at the hearing on this motion, and for the reasons given at the time of the hearing, the Court will require NICA to comply with the Court's December 12, 2005 Order, but the Court will not impose sanctions against NICA. The Court will require NICA to: (i) once again look to see if it has a copy of the insurance policy, and if not, to call Arthur J Gallagher and Company of New Jersey and/or Houston Casualty Company and see if they can provide the insurance policy; (ii) produce all its web pages relating to NOH deductions; (iii) produce its answering machine and/or telephone messages that relate to the insurance NICA provides; and (iv) produce the signature bank card.

IT IS ORDERED that the Plaintiffs' Motion to Enforce Order and for Sanctions Against Defendant NICA, Inc. is granted in part and denied in part. The Court will require NICA to: (i) once again look to see if it has a copy of the insurance policy, and if not, to call Arthur J Gallagher and Company of New Jersey and/or Houston Casualty Company and see if they can provide the insurance policy; (ii) produce all its web pages relating to NOH deductions; (iii) produce its answering machine and/or telephone messages that relate to the insurance NICA provides; and (iv) produce the signature bank card. The Court will not impose sanctions against NICA.



UNITED STATES DISTRICT JUDGE

Counsel:

Robert N. Hilgendorf
Santa Fe, New Mexico

Attorney for the Plaintiffs

John S. Stiff
John S. Stiff & Associates, L.L.C.
Albuquerque, New Mexico

*Attorneys for Defendants Mountain States Logistics,
Elisha Gilboa, Chris Obek, Alfred Trujillo, and Eric Chavez.*

Jason Alcaraz
Terry R. Guebert
Guebert, Bruckner & Bootes, P.C.
Albuquerque, New Mexico

Attorneys for Defendant Lazaro Hernandez

Michele Estrada
Estrada & Krehbiel, P.C.
Albuquerque, New Mexico

-- and --

Thomas McGrath
Braintree, Massachusetts

Attorneys for Defendant NICA, Inc.

Rudolph A. Lucero
Miller Stratvert P.A.,
Albuquerque, New Mexico

Attorneys for Intervener State Farm Fire & Casualty Company

